IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION No. 5 of 2006.

KOTAK MAHINDRA BANK LIMITED. ..PETITIONER.

V/s.

KATARE SPINNING MILLS LTD. .. RESPONDENT.

Mr. Tushar Goradia with Hrushikesh Nikumb for petitioner.

Mr. Rahul Risbud with Vikas Mahangare for respondent.

CORAM:S.C.DHARMADHIKARI,J.

DATED: 14TH JULY, 2006.

P.C.:-

1] Heard Mr.Goradia appearing for the petitioner and Mr. Rahul Risbud appearing for the respondent.

2] On 8th June, 2006 I had passed an order in this Company Petition wherein I had made a reference to an admission of the Company in the affidavit filed in reply in para 4 which reads as under;

" As per R

Company the amount due and payable by the company is not more than Rs.3,16,00,000/- principle amount plus interest thereon. In proof thereof the Balance Sheet as on 31/05/2005 is annexed hereto and is marked as "Exhibit A".

3] Based upon this, I had adjourned this matter as parties were exploring a possibility of overall settlement. It appears that the settlement is not possible. The petitioner bank has instituted this petition for winding up of the respondent on the basis that a admitted debt has not been paid nor any security has been furnished to satisfy the same. Thus,there is utter neglect and failure to pay the Legitimate dues. is their case that ICICI had advanced the loan and the details pertaining to the same are mentioned in para 6 of the petition. The submission of Mr. Gordia is that the Company has created

charge by way of Hypothecation and Mortgage on its movable and immovable property and also furnished personal guarantee. However, in terms of the loan agreement the principal amount with interest and other charges was to be paid within the periods specified therein.

4] The defaults have been highlighted from para 6(e) and (f). Even the guarantor was approached but there was no response. A reference is made to the without prejudice proposal and pending proceedings before the Debt Recovery Tribunal, Pune.

5] The present petitioner is an assignee of the debt and it is not disputed by Mr.Rahul Risbud appearing for the respondent that it can present a claim for recovery so also this petition for winding up. However, Mr.Risbud submits that the averments in the petition and more particularly from paras 12 to 14 are not correct. The Company may be in some difficulty, but presently it is making an effort to settle all claims. He states that the predecessor-in-title of the present

petitioner, ICICI had shown faith in the respondent because the respondent has repaid the loans under three facilities. It is only in the case of present facility which has been availed of that there is default in repayment.

6] With the assistance of learned counsel appearing for the parties, I have perused the petition as also annexures thereto, the affidavit in reply and the additional affidavit.

7] In my view, considering the totality of the circumstances, one opportunity needs to be given to the Company to pay the admitted sum atleast. The matter was adjourned to enable Mr.Risbud to take instructions. Now,his instructions are that the Company seeks two years time for payment of a sum of Rs. 3,16,00,000/-. This request is opposed by Shri.Gordia.

7] In my view, the following order would meet the ends of justice;

[a] Respondent Company is directed to deposit a sum of Rs. 3,16,00,000/- in monthly instalments of Rs. 26 lakhs each on or before 31st December, 2007. The said amount shall stand transferred to the credit of the Original Application filed by the petitioner.

[b] Thereupon, it would be open for the petitioner to make appropriate application for adjustment and appropriation of this amount towards the decretal claim.

[c] Needless to state that such application shall be considered on its own merits and in accordance with law.

[d] At the request of Mr.Risbud the first instalment of rupees Twenty six lakhs be deposited on 15th of September,2006 and every instalment thereafter shall be paid on 15th of each succeeding month till the entire amount stipulated above is deposited.

[e] In the event of the Company failing to deposit the first instalment or committing default in payment of any two instalments the company petition shall stand admitted and to be advertised by the petitioner in Free Press Journal on payment of usual charges.

(f) Needless to state that if the amount is deposited within the time stipulated then the same will be dealt by the D.R.T./Recovery Officer in accordance with law. All contentions in that behalf of both sides are specifically kept open.

[g] Ad interim orders passed on 8th June,2006 by this Court shall continue and liberty is reserved to the petitioner to apply for appointment of Provisional Liquidator in the event of the respondent committing default in payment of first instalment or any two

subsequent instalments.

[S.C. DHARMADHIKARI,J]